

**REMARKS***Status of Claims*

Prior to entry of this amendment, claims 1 and 3-9 were pending in this application. By way of this reply, claim 5 has been amended, claims 7 and 8 have been canceled without prejudice or disclaimer, and new claims 10-13 have been added. No new matter has been added and all of the claims are supported by the specification.

*Drawings*

Applicant respectfully requests that the Examiner indicates acceptance of the formal drawings filed December 16, 2005.

*Rejections Pursuant to 35 USC 102**Claims 1, 3 – 4, 7 and 9*

Claims 1, 3 – 4, 7 and 9 were rejected under 35 USC 102(b) as being anticipated by Bussell (U.S. 6,733,426). For at least the following reasons, the rejection is respectfully traversed.

At the outset, Applicant respectfully submits that the rejection under 35 USC 102(b) is improper because the publication date (September 18, 2003) of Bussell is after the priority date (June 19, 2003) of the present application. However, to help advance the examination of the present application, Applicant hereby substantively addresses the differences between the claimed invention and Bussell.

The claimed invention is directed to a user-actuated anterior *shoulder stretching*

device. Independent claim 1 requires, in part, a user-actuated mechanism that is *leg*-actuated. By contrast, Bussell fails to disclose at least these claimed limitations.

Bussell teaches a hydraulic leg-spreading device 10 as shown in Fig. 1. A user sits on seat 12, rests legs on leg decks 38, and then manually pumps handle 80, which is associated with a hydraulic pump, to thereby drive the leg decks 38 apart.

In the instant Office Action, the Examiner asserts that Bussell discloses “swing arms 36 ... capable of receiving a hand or wrist or forearm of a user at its distal end...” Applicant respectfully disagrees. As clearly described in col. 3, lines 16-20 of Bussell, the tubular extensions 36 are for telescopic engagement with leg supporting members 34. Fig. 1 of Bussell also clearly shows that there is no place on or near the tubular extensions 36 to “receive a hand or wrist or forearm.” Had the user put his or her hand, wrist, or forearm on the tubular extensions 36, the user will risk injuries by being pinched in the gaps between the extensions 36, the leg deck 38, and the engagement member 54. Further, as the device 10 of Bussell is designed to stretch the legs (see, e.g., the title of Bussell), it is unlikely that the user will be able to stretch the shoulder as claimed.

The instant Office Action has additionally equated the handle 80 of Bussell to the claimed “leg-actuated mechanism.” Applicant again respectfully disagrees. Referring to col. 3, line 65 – col. 4, line 4 of Bussell, the handle requires complex upward and downward strokes that are unlikely to be accomplished by legs as suggested by the Examiner. Moreover, the user is stretching his or her both legs with the device 10, and it is unlikely that an additional leg can be used to actuate the handle 80.

Regarding claim 3, Applicant further respectfully submits that, contrary to the assertions made in the instant Office Action, the handle 80 as taught by Bussell is not pressed away from the user during use as claimed. As discussed above, the handle 80 is stroked upward and downward, and is never away from the user. Thus, claim 3 is patentable for this additional reason.

Regarding claim 9, Applicant further respectfully submits that contrary to the assertions made in the instant Office Action, the seat 12 of Bussell does *not* have an adjustable height as claimed. Rather, Bussell teaches that back rests 18, 18a may be adjustable. In addition, the leg decks 38 may be adjusted through the tubular extensions. Accordingly, there is no need in Bussell to adjust the height of the seat 12. Thus, claim 9 is patentable for this additional reason.

In view of the above, Bussell fails to show or suggest the claimed invention as recited in independent claim 1 of the present application. Thus, independent claim 1 of the present application is patentable over Bussell for at least the reasons set forth above. Dependent claims 3, 4 and 9 are allowable for at least the same reasons. Accordingly, withdrawal of the rejection of claims 1, 3, 4 and 9 is respectfully requested.

#### *Claims 7 and 8*

Claims 7 and 8 were rejected under 35 U.S.C. 102(b) as being anticipated by Holt (U.S. 5,277,681). By way of this reply, claims 7 and 8 have been canceled, rendering the rejection moot.

*Claims 5 and 6*

Claims 5 and 6 were rejected under 35 U.S.C. 102(b) as being anticipated by Huang (U.S. 5,904,641). By way of this reply, claim 5 has been amended for clarification purposes. To the extent that the rejection may still apply to the amended claims, the rejection is respectfully traversed.

Independent claim 5 as amended requires, in part, that each swing arm includes an arm supporting assembly *freely slidably mounted* thereon for free sliding movement relative to the swing arm during use. No new matter has been added by way of this amendment as support for this amendment may be found, for example, on page 5, line 10, and page 6, line 23, as well as Figs. 3 and 5 of the present application as filed. Claim 5 also requires that each swing-arm is adapted to receive a hand or wrist or forearm of a user at its distal end.

By contrast, Huang is directed to a manually operated leg-spreading device. The user's legs are supported by leg-supporting plates 21, and the feet are supported by adjustable feet-supporting plates 23 and are hooked under feet-holding members 232 that extend from feet-supporting plates 23.

Contrary to the assertions made in the instant Office Action, the leg-supporting plates 21 cannot be used to "receive a user forearm," or the user risks injuries to the forearm.

Moreover, the leg-supporting plates 21 of Huang are *not* freely slidably mounted as claimed. Applicant additionally notes that the instant Office Action has equated two insert rods 22 of Huang to the claimed "supporting assemblies." This is respectfully

traversed. As clearly shown in Fig. 1 of Huang, items 22 are small inserts, and cannot possibly be equivalent to “supporting assemblies” as suggested by the Examiner.

Furthermore, Applicant respectfully traverses the assertions made in the instant Office Action that Huang teaches an arm supporting assembly 22, or any arm supporting assembly equivalent thereof, slidably mounted on the swing arms as required by claim 5. Referring to, e.g., col. 1, line 66 – col. 2, line 2, Huang teaches that the foot-supporting plates 23 (and associated foot-holding members 232) are *incrementally* adjustable relative to the swing arms via a “series of holes through which an insert pin 24 passes so as to position the insert rod 22”. Thus, Huang teaches stepped, incremental adjustment that occurs prior to use of the device, not through “slidable mounting” at all.

As further clarified through the amendment to claim 5, the arm supporting assembly in accordance with an embodiment of the present invention is *freely* slidable during use. Advantageously, such freely slidable configuration improves ergonomics of the device. In the absence of this feature, a large frictional force would be generated between the arm support assembly and the user's arm during stretching. This force tends to create a great deal of discomfort for the user, both in terms of the frictional force applied to the skin near the inside of the elbow joint, and also in terms of the tensile force applied to the shoulder joint, which tends to pull the arm out of the shoulder socket. In other words, the free sliding of the arm support assembly on the swing arm ensures that only tangential stretching forces, and not frictional radial forces, are applied to the user's arm during stretching.

In view of the above, Huang fails to show or suggest the claimed invention as recited in independent claim 5 of the present application. Thus, independent claim 5 of the present application is patentable over Huang for at least the reasons set forth above. Dependent claim 6 is allowable for at least the same reasons. Accordingly, withdrawal of the rejection of claims 5 and 6 is respectfully requested.

*New Claims 10-13*

New claim 10 has been added to recite that “the device includes a height adjustable seat for adjusting the height of a seated user relative to the pair of laterally-extending swing arms.” No new matter has been added by way of this amendment as support for this amendment may be found, for example, on page 4, line 15 of the present application as filed. Claim 10 depends from claim 5, and thus is allowable for at least the reasons discussed above with respect to claim 5. In addition, none of the cited references discloses a height adjustable seat. Thus, claim 10 is allowable for this additional reason.

New claim 11 has been added to recite that “each swing arm includes an arm supporting assembly freely slidably mounted thereon for free sliding movement relative to the swing arm during use.” No new matter has been added by way of adding new claim 11 as support for claim 11 may be found, for example, on page 5, line 10, and page 6, line 23, as well as Figs. 3 and 5 of the present application as filed. Claim 11 depends from claim 1, and thus is allowable for at least the reasons discussed above with respect to claim 1. In addition, none of the cited references discloses the “freely

slidably mounted" arm supporting assembly. Thus, claim 11 is allowable for this additional reason.

New claims 12 and 13 have been added to recite features shown in Figs. 4, 5 and 6 and described in the associated text of the present application. No new matter has been added by way of these amendments. Claims 12 and 13 depend from claims 1 and 5, respectively, and thus are allowable for at least the reasons discussed above with respect to claims 1 and 5.

### **CONCLUSION**

Applicant believes that the reply is fully responsive to all outstanding issues and thus places this application in condition for allowance. If a telephone conversation would be helpful to the prosecution of this case, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please direct all correspondence to **Myers Dawes Andras & Sherman LLP**, 19900 Mac Arthur Blvd., 11<sup>th</sup> Floor, Irvine, California 92612.

Respectfully submitted,



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